IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7877 OF 2006

Bhau Laxman Thosar & Anr..... ....Petitioners
V/s
Shivaji Laxman Thosar & Ors..... ....Respondents.

Mr.U.B.Nighot, Adv. For the petitioners.

Mr.Sanjeev A. Sawant with Mr.Samir Suryawanshi, Adv. For R. No.1.

CORAM: A.P.DESHPANDE, J.
27/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioners are the original defendant Nos. 3 and 5 whereas the respondent No.1 is the plaintiff. The present petitioner No.1 and respondent No.1 are real brothers. In the suit the plaintiff has claimed that on a partition being effected the suit property fell to the share of the plaintiff and despite the same the present petitioners were trying to obstruct the plaintiff from peaceful enjoyment of the suit property. As such suit for perpetual injunction was filed and an application for temporary injunction was also filed in the suit.

2. The present petitioners were served with the suit summons on 1.6.05 and the next date for appearance was 8.8.05. The petitioners did put in appearance. However on account of non filing of written statement on 7.10.05 the trial Court passed an order of no written statement. The learned counsel for the petitioner has submitted that the petitioner was not even granted 90 days time to file written statement which ordinarily ought to have been granted. Though no written

statement order was passed on 7.10.05 the present petitioners did not take timely steps thereafter and moved an application on 23.6.06 for setting aside the no written statement order. The trial Court has rejected the application by holding that the reason for non filing of written statement as assigned by the present petitioner i.e. ill health of defendant No.3 was not substantiated. Be it as it may, the application came to be rejected and hence the present writ petition is filed. This Court by an ad-interim order dated 9.4.07 has stayed the proceedings of the suit and hence suit has not proceeded further.

3. The learned counsel for the petitioner submits that utmost hardship, inconvenience and irreparable loss would be caused to the petitioner if and in case the petitioner is not given an opportunity to file written statement and defend the suit. It is reiterated emphatically that the trial Court did not even grant 90 days time to file written statement and which fact is evident from the no written statement order dated 7.10.05. The order dated 7.10.05 is a non speaking order bereft of reasons and the same is passed even before expiry of 90 days from the date of service of summons on the petitioner. I am of the clear view that unless and until the impugned orders are interfered with the petitioner will be put to suffer utmost hardship and miscarriage of justice would occur. If and in case the impugned order is set aside and the petitioners are permitted to defend the suit on merit the same would be in furtherance of cause of justice. No doubt the present respondent No.1 can be compensated for the delay in filing written statement. Hence in the interest of justice writ petition is allowed. Impugned order passed by the trial Court dated 7.10.05 is quashed and set aside. The impugned order dated 10.7.06 is also quashed and set aside. The petitioners are permitted to file written statement in the suit which shall be filed within a period of three weeks from today. Petitioners shall not be entitled to

any further time for filing written statement. This order is subject to payment of costs quantified at Rs.5000/- to be paid by petitioners to respondent No.1 which shall also be deposited in the trial Court within a period of three weeks from today. Needless to mention that the respondent No.1 shall be at liberty to withdraw the said amount. Rule made absolute in above terms. Having regard to the time already spent ends of justice would be met by directing the trial Court to decide the suit expeditiously.

27.8.07